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**BEFORE THE STATE BOARD OF LAND COMMISSIONERS**

SHARLIE-GROUSE NEIGHBORHOOD  
ASSOCIATION, INC.,

Petitioner,

v.

IDAHO STATE BOARD OF LAND  
COMMISSIONERS,

Respondent,

and

PAYETTE LAKES COTTAGE SITES  
OWNERS ASSOCIATION, INC., and  
WAGON WHEEL BAY DOCK  
ASSOCIATION, INC.,

Intervenor/Respondents.

**SGNA'S FURTHER STATEMENT  
REGARDING DISCOVERY**

Through its undersigned counsel, Petitioner Sharlie-Grouse Neighborhood Association, Inc. (“SGNA”, pronounced “signa”) submits this statement in response to the Hearing Officer’s request for information regarding discovery contained in the *Notice of Scheduling Conference* dated December 17, 2018.

SGNA contends that the two deeds issued to the Payette Lakes Cottage Site Owners Association, Inc. (“PLCSOA” or “Site Owners”) violate the Idaho Constitution (as well as Idaho statutes). The Constitution provides:

It shall be the duty of the state board of land commissioners to provide for the location, protection, sale or rental of all the lands heretofore, or which may hereafter be granted to or acquired by the state by or from the general government, under such regulations as may be prescribed by law, and in such manner as will secure the maximum long-term financial return to the institution to which granted or to the state if not specifically granted; provided, that no state lands shall be sold for less than the appraised price. No law shall ever be passed by the legislature granting any privileges to persons who may have settled upon any such public lands, subsequent to the survey thereof by the general government, by which the amount to be derived by the sale, or other disposition of such lands, shall be diminished, directly or indirectly. The legislature shall, at the earliest practicable period, provide by law that the general grants of land made by congress to the state shall be judiciously located and carefully preserved and held in trust, subject to disposal at public auction for the use and benefit of the respective object for which said grants of land were made, and the legislature shall provide for the sale of said lands from time to time and for the sale of timber on all state lands and for the faithful application of the proceeds thereof in accordance with the terms of said grants; provided, that not to exceed one hundred sections of state lands shall be sold in any one year, and to be sold in subdivisions of not to exceed three hundred twenty acres of land to any one individual, company or corporation. The legislature shall have power to authorize the state board of land commissioners to exchange granted or acquired lands of the state on an equal value basis for other lands under agreement with the United States, local units of government, corporations, companies, individuals, or combinations thereof.

Idaho Const. art. IX, § 8 (emphasis added).

SGNA has two concerns, both arising under section 8. First, deeds, by their very nature, “dispose” of property within the meaning of section 8. Section 8 mandates that disposal shall occur “at public auction.” No public auction occurred here. Hence, the deeds were unlawfully issued, null, and void.

Second, the deeds apparently were granted with little or no financial consideration, notwithstanding the fact that the property has considerable economic value and notwithstanding the Land Board’s knowledge that SGNA or others were willing to pay for parts of the property. Hence, the deeds violate the Land Board’s obligation to maximize returns from its trust property.

With that brief background, SGNA turns to a more complete discussion of its discovery needs.

#### **I. PUBLIC AUCTION**

In their respective answers, Respondent Idaho State Board of Land Commissioners (“Land Board”) and Intervenors-Respondents Payette Lakes Cottage Sites Owners Association, Inc. (“PLCSOA” or “Site Owners”) and Wagon Wheel Bay Dock Association, Inc. (“WWBDA” or “Wagon Wheel”) repeatedly and without explanation “specifically deny that the Deed and Amended Deed constitute disposal.” *E.g.*, Land Board’s *Answer to Petition for Declaratory Ruling*, ¶ 17 (June 19, 2018).

Counsel for SGNA has reached out to opposing counsel seeking an explanation of the basis of this conclusion. SGNA remains at a loss to understand how conveyance of trust property (any property interest, no matter how small or remote) by deed (including quitclaim deed) does not constitute the disposal of trust property. This is particularly perplexing in light of the clear and forceful guidance in *Wasden v. State Bd. Of Land Comm’rs* (“*Wasden II*”), 153 Idaho 190, 280 P.3d 693 (2012). Plainly, something was conveyed the two deeds. Prior to the conveyance, the State demanded lease payments with respect to part of the subject property.

After the deeds, the State did not, and the grantee did. SGNA does not understand how that is not a disposal.

Based on undersigned counsel's admittedly brief and preliminary discussion with counsel for the Land Board, it appears that this may present a pure question of law that may be resolved on the basis of facts now in the record or easily provided. If so, it may be possible to resolve this first constitutional question (and possibly the entire litigation) by way of motion for summary judgment. On the other hand, if the position of opposing parties is premised upon facts that go beyond the face of the deeds, then more extensive discovery may be necessary. Simply put, SGNA needs to learn what is the basis of the opposing parties' contention that no disposal occurred. Only then can SGNA say what discovery (or further discovery) is needed.

## **II. STANDING**

Opposing parties have have alleged, again, without explanation, that SGNA lacks standing. SGNA is at a loss to understand on what basis opposing parties draw this conclusion, given the clear law on organizational (aka associational) standing. (The case law cited by Intervenor fails to address organizational standing.)

The seminal case in Idaho is *Glengary-Gamlin Protective Assn., Inc. v. Bird*, 106 Idaho 84, 675 P.2d 344 (Ct. App. 1983), in which the Court concluded that a citizens group had organizational standing to oppose a conditional use permit for an air strip. The three-part test first articulated in Idaho by *Glengary-Gamlin* was repeated more recently by the United States Supreme Court. "An association has standing to bring suit on behalf of its members when its members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Friends of the Earth, Inc. v. Laidlaw Envtl. Services (TOC), Inc.*, 528 U.S. 167, 181 (2000).

A more definitive statement from the opposing parties will help SGNA understand whether any discovery is necessary to resolve this issue, or whether it may be resolved by a motion for partial summary judgment. Or better yet, SGNA would hope that the opposing parties would drop this frivolous defense and thereby avoid the incursion of unnecessary attorney fees.

### **III. MAXIMUM LONG-TERM FINANCIAL RETURN**

At this point, SGNA believes it makes sense to approach this litigation incrementally. Doing so may allow the parties to resolve potentially dispositive issues without expending resources (and undertaking discovery) on the second constitutional issue—the maximization of long-term financial return.

Accordingly, SGNA recommends that, at this point, discovery should be limited to written discovery aimed at obtaining a clearer understanding of each party's position.

At some point, depending on how the matter progresses, it might be necessary to explore the second constitutional concern. At that point, SGNA will probably be in a better position to describe what discovery it needs than it is now. However, in order to comply with the Hearing Officer's instruction to describe the nature of discovery, SGNA offers the following.

#### **1. Kind of Discovery**

Petitioner proposes discovery relative to (i) the information the State or the intervenors had or presently have about the value of the land in question; (ii) the analysis, if any, conducted by the State or the intervenors relating to the value of the land before or after the State conveyed such land; and (iii) the financial value, if any, the State received, or the intervenors (or their members or any other person) paid to the State, for the interests in land in question.

2. The names of any deponents.

Petitioner does not presently know the name of deponents, but expect that written discovery will allow for the identification thereof. At this point, SGNA expects to undertake discovery by deposition only to the extent that necessary information cannot be obtained by other means.

3. The types of any records sought to be produced

Petitioner proposes that documents falling within the purview of No. 1 above may include, but are not limited to, meeting minutes, staff or other third party reports or recommendations, appraisals, and financial instruments.

4. The necessity for such discovery.

Depending on what SGNA learns in preliminary discovery or more informal communications with opposing counsel with respect to the nature of the opposing parties' legal arguments, this phase of discovery may be necessary to establish whether the deeds were issued consistent with the Land Board's constitutional and statutory obligation to maximize the long-term financial return on trust property. Specifically, discovery may be required to determine the extent to which there was or is value associated with the property and whether the conveyance of the interest held by the State maximized long-term value.


#### **IV. INFORMAL COMMUNICATIONS AND SETTLEMENT**

SGNA believes that this litigation may be conducted most efficiently if all parties and their counsel commit to engage in forthcoming discussions and cooperative efforts to articulate their legal positions and the facts supporting them. This may require some formal discovery. However, SGNA would welcome an instruction by the Hearing Officer to the parties to endeavor to employ informal means of obtaining the required understanding of other parties' legal position and supporting facts.

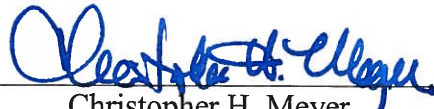
Likewise, the parties should be encouraged to pursue, simultaneously, creative solutions that might be able to accommodate each of their needs in ways other than the relief sought by SGNA in its Petition.

Respectfully submitted this 9<sup>th</sup> day of January, 2019.

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### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9<sup>th</sup> day of January, 2019, the foregoing was filed, served, and copied as follows:

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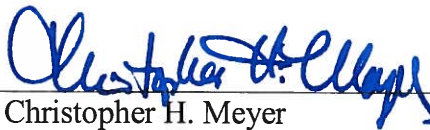
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